

# PATENT COOPERATION TREATY

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### INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)

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Applicant's or agent's file reference NO 7523WO	<b>FOR FURTHER ACTION</b> See Notification of Transmittal of International Preliminary Examination Report (Form PCT/PEA/416)	
International application No. PCT/EP 03/03520	International filing date (day/month/year) 03.04.2003	Priority date (day/month/year) 05.04.2002
International Patent Classification (IPC) or both national classification and IPC A23K1/165		
Applicant NESTEC S.A et al		

- This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.
- This REPORT consists of a total of 5 sheets, including this cover sheet.
  - ☒ This report is also accompanied by ANNEXES, i.e. sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).

These annexes consist of a total of 1 sheets.

- This report contains indications relating to the following items:

- I ☒ Basis of the opinion
- II ☐ Priority
- III ☐ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- IV ☐ Lack of unity of invention
- V ☒ Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- VI ☐ Certain documents cited
- VII ☐ Certain defects in the international application
- VIII ☐ Certain observations on the international application

Date of submission of the demand  16.10.2003	Date of completion of this report  07.09.2004
Name and mailing address of the international preliminary examining authority:   European Patent Office - P.B. 5818 Patentlaan 2 NL-2280 HV Rijswijk - Pays Bas Tel. +31 70 340 - 2040 Tx: 31 651 epo nl Fax: +31 70 340 - 3016	Authorized Officer  Rooney, K  Telephone No. +31 70 340-3931  

**INTERNATIONAL PRELIMINARY  
EXAMINATION REPORT**

International application No. **PCT/EP 03/03520**

**I. Basis of the report**

1. With regard to the **elements** of the international application (*Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17):*

**Description, Pages**

1-20 as originally filed

**Claims, Numbers**

1-24 as originally filed  
25-30 received on 14.07.2004 with letter of 14.07.2004

2. With regard to the **language**, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language: , which is:

- ☐ the language of a translation furnished for the purposes of the international search (under Rule 23.1(b)).  
☐ the language of publication of the international application (under Rule 48.3(b)).  
☐ the language of a translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.  
☐ filed together with the international application in computer readable form.  
☐ furnished subsequently to this Authority in written form.  
☐ furnished subsequently to this Authority in computer readable form.  
☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.  
☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. The amendments have resulted in the cancellation of:

- ☐ the description, pages:  
☐ the claims, Nos.:  
☐ the drawings, sheets:

5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed (Rule 70.2(c)).

*(Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.)*

6. Additional observations, if necessary:

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EXAMINATION REPORT**

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**V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability;  
citations and explanations supporting such statement**

**1. Statement**

Novelty (N)	Yes: Claims	8,20-25
	No: Claims	1, 2,3,4,5, 6,7,9,10,11,12,13,14,15,16,17,18,19,26,27,28,29,30
Inventive step (IS)	Yes: Claims	
	No: Claims	1-30
Industrial applicability (IA)	Yes: Claims	1-30
	No: Claims	

**2. Citations and explanations**

**see separate sheet**

**INTERNATIONAL PRELIMINARY  
EXAMINATION REPORT - SEPARATE SHEET**

International application No. PCT/EP 03/03520

**Re Item V**

**Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

1. Reference is made to the following documents:

- D1: NICHOLSON, A., WATSON, A.D.J., AND MERCER, J.R.: 'Fat malassimilation in cats' AUSTRALIAN VETERINARY JOURNAL, vol. 66, no. 4, 1989, pages 110-113, XP001112921 AUSTRALIAN VETERINARY ASSOCIATION, BRUNSWICK, AU ISSN: 0005-0423 cited in the application
- D2: WO 01 62280 A (MARGOLIN ALEX ;SHENOY BHAMI (US); ALTUS BIOLOG INC (US)) 30 August 2001 (2001-08-30)
- D3: SUZUKI, A. ET AL.: 'Effect of bacterial or porcine lipase with low or high fat diets on nutrient absorption in pancreatic insufficient dogs' GASTROENTEROLOGY., vol. 116, 1999, pages 431-437, XP001053436 W.B.SAUNDERS COMPANY, PHILADELPHIA., US ISSN: 0016-5085
- D4: CANTAFORA A ET AL: 'DIETARY TAURINE CONTENT CHANGES LIVER LIPIDS IN CATS' JOURNAL OF NUTRITION, WISTAR INSTITUTE OF ANATOMY AND BIOLOGY, PHILADELPHIA, PA., US, vol. 121, no. 10, 1991, pages 1522-1528, XP008019214 ISSN: 0022-3166
- D5: DATABASE FSTA [Online] INTERNATIONAL FOOD INFORMATION SERVICE (IFIS), FRANFURT/MAIN, DE; TOPPING D L ET AL: 'Foods, nutrients and digestive health.' Database accession no. 2000-00-a0477 XP002263150 & AUSTRALIAN JOURNAL OF NUTRITION AND DIETETICS 56 (3, SUPPL.) S22-S34 1999 CSIRO HEALTH SCI. & NUTR., PO BOX 10041, ADELAIDE, SA 5000, AUSTRALIA,
- D6: ZIEMLANSKI, S., CIESLAKOWA, D., AND RAKOWSKA, M.: 'Balanced intrainestinal nutrition. A preparation for intrainestinal no-residue nutrition' ACTA PHYSIOLOGICA POLONICA., vol. 29, no. 6, 1978, pages 561-573, XP008019215 WARSZAW., PL ISSN: 0374-5627
- D7: 'Foods, nutrients and digestive health.', 'TOPPING D L ET AL', 'FSTA', 'INTERNATIONAL FOOD INFORMATION SERVICE (IFIS), FRANFURT/MAIN, DE',,

2. The present application does not meet the requirements of Article 33 (2) PCT because the subject-matter of independent claims 1, 11, 26 and 29 is not new.

The applicant states that there is no mention of liver function promoters in the above cited documents and that this may support an argument for novelty for the amended claims.

However, it appears that these documents do contain such components, albeit implicitly.

The document D1 discloses a method of providing a cat with improved appearance (cat was emaciated and poorly groomed pre-treatment) by providing the cat with a diet composition which contained pancreatic extract (containing lipase, proteases, etc.) Case study II in this document discloses the diet composition which consists of a canned food diet in addition to the pancreatic extract. Typically canned food diets are known to contain components such as taurine, emulsifiers, vitamins, minerals (i.e. the claimed liver function promoters). The effect of providing this diet to the cat was that of increased lipid digestibility (see D1; the whole document). The document D1 removes novelty from the subject-matter of independent claims 1, 11, 26 and 29.

The document D2 discloses a composition used in the prophylaxis of fat malabsorption, thus preventing symptoms such as abdominal discomfort and failure to thrive. The composition consists of lipase (a pancreatic function promoter) and includes protease (an intestinal function promoter) and may be used as part of the dietary regime of pet animals. Studies were conducted using a diet which consisted of the supplement fed along with Hill's prescription diet which contains taurine, vitamins (A, B12, D3, C, E, etc.) minerals (K, Ca, Mg, Zn, Na, Mn, Se, etc.). The diets were fed to dogs (See D2; page 1; page 10, example 14 and claims 1, 10, 24, 38 and 42). The document D2 removes novelty from the subject-matter of independent claims 1, 11, 26 and 29.

The document D3 discloses compositions used in treatment of steatorrhoea (correction of which reduces growth retardation in the young) using a feeding regime in dogs of a normal diet with additional lipase and protease. The composition Viokase was sprinkled on the dogs meal. Implicitly, most meals will comprise one or all of the claimed liver function promoters (see D3; the whole document). The document D3 removes novelty from the subject-matter of independent claims 1, 11, 26 and 29.

3. Dependent claims 2-10, 12-25, 27-28 and 30 do not contain any features which, in combination with the features of any claim to which they refer, meet the requirements of the PCT in respect of novelty and/or inventive step, as the features of these dependent claims have already been employed for the same purpose in similar compositions and processes (see whole document D1-D7).

New Claims

25. A regimen according to claim 23 wherein the benefit that is related to outward appearance is observable in any one or more of:
- 5 - Improved body condition;
  - Improved muscle tone;
  - Improved skin and coat condition; and
  - A younger look.
- 10 26. An edible composition for use in maintaining, improving, promoting or otherwise enhancing lipid digestibility in a pet animal by regular administration to such animal, according to predetermined directions, the composition comprising a pancreatic function-promoter and at least one of a liver function-promoter and an intestinal mucosa function-promoter.
- 15 27. The edible composition according to claim 26 comprising the pancreatic function-promoter and at least one of the liver function-promoter.
- 20 28. The edible composition according to claim 27 further comprising at least one of the intestinal mucosa function-promoter.
- 25 29. A method of improving the appearance of a pet animal comprising the step of increasing its capability to digest fat in its diet by feeding the pet a diet that contains a pancreatic function promoter and a liver function promoter, an intestinal mucosa function promoter or a combination thereof.
- 30 30. A method according to claim 29 wherein the pancreatic function promoter comprises a fat emulsifier / emulsification system, the intestinal mucosa function promoter comprises an acidifying agent and intestinal mucosa function promoter comprises a fat transportation agent.